



WITH YOU

ACCOMPANIMENT OF VICTIMS AND  
WITNESSES IN THE JUSTICE SYSTEM



# PRACTICAL

# GUIDE



ACCOMPANIMENT OF VICTIMS AND  
WITNESSES IN THE JUSTICE SYSTEM



Coordinator:



This Publication is Funded by  
the European Union's  
Justice Programme (2014-2020)



**Project:** WITH YOU - Accompaniment of Victims and Witnesses in the Justice System

**Coordinator:** APAV. Associação Portuguesa de Apoio à Vítima

**Partners:** Procuradoria Geral da República; Direção Geral da Administração da Justiça; Guarda Nacional Republicana; Instituto de Reintegración Social de Euskadi | Euskadiko Birgizarteratze Institutoa; France Victims; Pagalba nusikaltimū aukoms; Udruga za podršku žrtvama i svjedocima.

**Title:** Practical Guide - Accompaniment of Victims and Witnesses in the Justice System

**Author:** APAV. Associação Portuguesa de Apoio à Vítima

**Funded:** Funded by the European Union's Justice Programme (2014-2020)

**Illustration and Layout Design:** Último Take

**Print:** xxx

**1.<sup>st</sup> Edition:** September 2021

**Print Run:** 100

**ISBN:** 978-989-53235-4-8

**Legal Deposit:** n.º 000000/00

2021 APAV - Associação Portuguesa de Apoio à Vítima  
[www.apav.pt](http://www.apav.pt)





I

III

II



# PRACTICAL

IV

# GUIDE



ACCOMPANIMENT OF VICTIMS AND WITNESSES IN THE JUSTICE SYSTEM



VI

V

VII





# CONTENTS

- Why this Practical Guide . . . . . 7**
  
- I. Introduction: . . . . . 11**
  - I. 1. **Accompanying victims and witnesses to criminal proceedings - practices already in place . . . . . 11**
  
- II. Definitions . . . . . 18**
  - II. 1. **What are criminal proceedings?. . . . . 18**
  - II. 2. **Who's who? . . . . . 34**
    - II. 2.1. Who is a victim?. . . . . 34
    - II. 2.2. Who is a witness?. . . . . 35
    - II. 2.3. Who is a victim support worker? . . . . . 37
  
- III. Why accompany victims and witnesses to criminal proceedings? . . . . . 39**
  - III. 1. **To which diligences may the victim or witness be accompanied to? . . . . . 42**
    - III. 1.1. Portuguese framework on accompaniment of victims. . . . . 42
    - III. 1.2. Other diligences not foreseen in law that victims/witnesses should be allowed to be accompanied to. . . . . 47
  
- IV. The Victim Support Worker's role in the diligence . . . . . 49**
  
- V. Preparing the diligence . . . . . 51**
  - V. 1. **Overall view of the preparation phase . . . . . 51**
    - V. 1.1. Knowing the victimisation history . . . . . 54
    - V. 1.2. Differentiating the approach . . . . . 54





- V. 1.2.1. Children and youngsters . . . . . 54
    - V. 1.2.2. People with some type of disability 55
    - V. 1.2.3. People with different cultural and religious backgrounds . . . . . 55
  - V. 1.3. Ascertain how the victim feels . . . . . 56
- V. 2. The first preparation session with the victim or witness . . . . . 57
  - V. 2.1. Introducing yourself and getting to know the victim or witness . . . . . 57
- V. 3. Preparing the victim or witness to the diligence . . . 58
  - V. 3.1. Explaining in what the diligence consists of . . 58
  - V. 3.2. Explaining the VSW's role in the diligence . . 63
- V. 4. Evaluation the victim or witness's needs . . . . . 64
- V. 5. Visiting the venue . . . . . 65
- V. 6. Provide practical tips to deal with having to go to the diligence . . . . . 65
- V. 7. Specificities when accompanying the victim to press charges . . . . . 66

**VI. Going to the diligence . . . . . 67**

- VI. 1. Meeting the victim or witness. . . . . 67
  - VI. 1.1. If there was not a chance to contact the victim prior to the day of the diligence . . . . 68
- VI. 2. Knowing where to go . . . . . 68
- VI. 3. Good practices when accompanying victims or witnesses to diligences . . . . . 72

**VII. Follow-up . . . . . 73**

- VII. 1. Ongoing support after the diligence. . . . . 73





# WHY THIS PRACTICAL GUIDE

For many years victims of crime were overlooked by the justice system, however in recent years, the importance of the victims' role started to be recognised. The Directive 2012/29/EU has had a crucial role in systematizing victims' minimum rights, thus upholding Article 47 of the Charter of Fundamental Rights of the European Union on the right to an effective remedy and to a fair trial.

Crime victims benefit from a wide range of rights, which allow them to participate fairly in the proceedings. One of the rights provided for in the Directive (articles 3(3) and 20(c)) is the right to be accompanied during criminal proceedings by someone of the victims' choice, however not all EU countries have adopted legislation accordingly.

Even in countries where this right is prescribed by law, victims sometimes face resistance from judicial authorities or law enforcement agents (LEA) who fear the presence of a third party may jeopardise the judicial procedure. This may be a result of the dearth knowledge and awareness on the advantages a good support process has on the victims' recovery, which in turn, culminates in a better quality of evidence provided and facilitates a good judicial outcome. In addition, the justice system is still ruled by excessive formality which, in face of an inexistent regulation on the accompaniment, leaves the victim (and witnesses) alone when facing such system.

The absence of accompaniment of victims during judicial proceedings leads to the lack of effective support, an increase of victims' anxiety towards their participation in the proceedings, as



well as an ineffective exercise of their rights, which can culminate in secondary victimisation. These harmful effects may also be seen in witnesses, especially those who have to testify about violent crimes.

**Project WithYou: accompaniment of victims and witnesses in the justice system** aims at addressing these challenges and contribute to mitigate secondary/repeated victimisation during criminal proceedings and, consequently, contribute to a positive judicial outcome.



More specifically, WithYou hopes to promote an effective support to victims and witnesses during criminal proceedings, thus contributing to their recovery and a positive judicial outcome; to contribute to reduce victim's anxiety regarding the criminal procedure; as well as to promote an effective exercise of victim's rights in the criminal justice system.

The project, implemented in Croatia, France, Basque Country, Portugal and Lithuania, involves activities targeting LEA, judicial authorities and victim support workers (VSW), since these are the actors with a paramount role in ensuring that victims and witnesses' right to be accompanied is effectively enjoyed. Victims and witnesses are also a target group, since contributing to develop an accompaniment practice aims to make their rights effective in the justice system.

Said activities range from workshops for judicial practitioners and LEA on the topic of victims' right to be accompanied during judicial proceedings to the production and dissemination of awareness raising materials on the advantages of putting this right





into practice, with the aim of tackling both the lack of awareness of the impacts crime has on its victims (and witnesses) and the fear that a VSW may jeopardise the judicial procedure.

WithYou also focuses on the development of a general practice allowing victims and witnesses to be accompanied by a VSW during judicial proceedings that could be adopted in several Member States. To do so, information on the accompaniment of victims and witnesses during judicial proceedings already taking place in other countries is gathered on a desk research report, the conclusions of which are reproduced in this Guide.

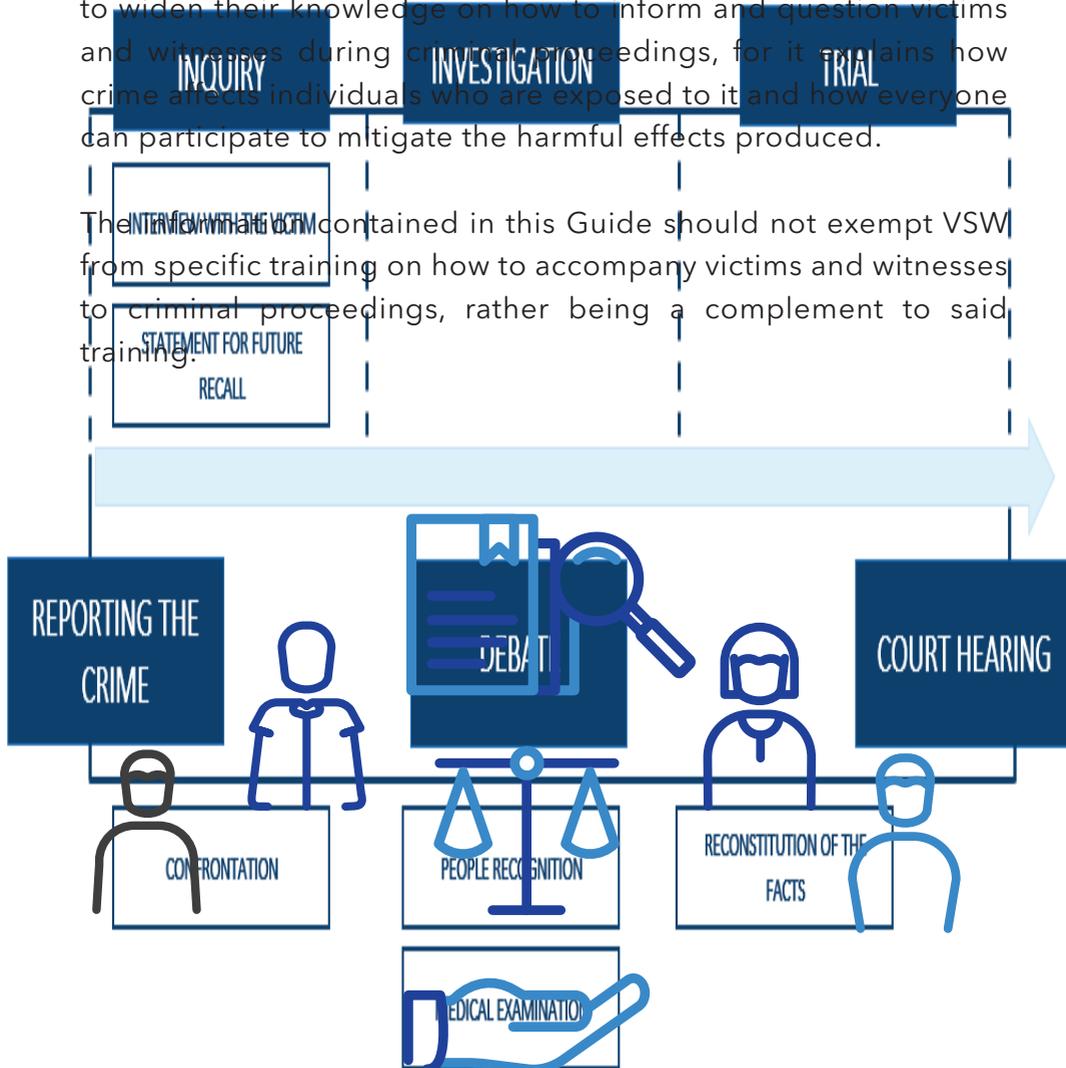
According to the Fundamental Rights Report 2018, there's evidence showing that victims still encounter obstacles when reporting crime or receiving information on their rights, which can negatively affect the enjoyment of their rights in practice. We believe that allowing victims and witnesses to be accompanied by a VSW will promote a better understanding of their rights and facilitate their participation in the judicial proceedings.

Therefore, the creation of this Practical Guide containing guidelines on how to accompany victims and witnesses when interacting with the justice system, aims at ensuring that VSW are able to help victims and witnesses to effectively exercise their rights when put in contact with the justice system. It also provides information on how to differentiate the approach based on specific characteristics of those being accompanied, making VSW aware of the need to personalise the support provided.



The main goal of this Practical Guide is to serve as a tool to which VSW can resort to, to find information on how to accompany victims and witnesses who participate in criminal proceedings, from their first contact to the follow-up after the diligence takes place. The Guide may also be useful to judicial authorities and LEA who wish to widen their knowledge on how to inform and question victims and witnesses during criminal proceedings, for it explains how crime affects individuals who are exposed to it and how everyone can participate to mitigate the harmful effects produced.

The information contained in this Guide should not exempt VSW from specific training on how to accompany victims and witnesses to criminal proceedings, rather being a complement to said training.





# I. INTRODUCTION:

## I. 1. ACCOMPANYING VICTIMS AND WITNESSES TO CRIMINAL PROCEEDINGS - PRACTICES ALREADY IN PLACE

In order to deepen the knowledge on the accompaniment of victims and witnesses to criminal proceedings and to substantiate the development of a general practice of accompaniment, one of the activities lead within Project WithYou was a desk research on good practices of accompaniment already in place in twelve countries from the European Union. Information was gathered from Austria, Croatia, England and Wales, France, Germany, Ireland, Lithuania, Northern Ireland, Portugal, Scotland and Spain.

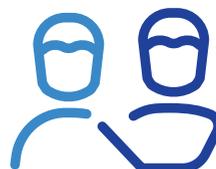
The majority of countries' legislation provides for the accompaniment of both victims and witnesses. France, Germany, Spain and Lithuania however provide for the accompaniment of victims only. We believe that both victims and witnesses should be allowed to be accompanied when participating in the criminal proceedings, for the reasons that justify the accompaniment may be found in both.

Even though there are no age restrictions to be accompanied, in most countries child victims and child witnesses receive special treatment, because they are usually deemed as vulnerable. This is a correct practice, established in accordance with article 22(4) of the Victim's Directive. Nevertheless, it should be noted that not only child victims and witnesses are entitled to accompaniment; an adult may benefit from the accompaniment of a third person



as well and the fact that children tend to be more protected, does not collide with the adult's right to be accompanied.

After a criminal procedure is started, the most common place victims/witnesses are allowed to be accompanied to are court hearings, when having to give evidence. Nevertheless, some organisations accompany victims to police stations when filing complaints and others accompany them to hospitals when there is a need to be subjected to a medical exam due to the crime.



The accompaniment should not be restricted to these types of diligences, for victims and witnesses - but victims especially - may be called to participate in other phases or diligences of the criminal procedure, which may cause them anxiety or fear that justifies the accompaniment.

When legislation provides for accompaniment of victims and witnesses, in almost every country, there is only reference to a "person of choice" or a "person of trust", without specifying who that may be. Therefore, this person may be a professional, like a victim support worker (VSW), or a friend, a family member, or even a neighbour or acquaintance.

We believe that accompaniment by a professional is preferred, as long as there is a chance for the victim or witness to establish a relationship with the VSW. Although being accompanied by a friend or family member may be more tranquilising for some victims or witnesses, others may feel some pressure to behave a certain way in front of their acquaintances. On the other hand, VSW



are trained on not only supporting victims/witnesses, but also on the specificities of criminal proceedings, which make them more suitable to answer any questions that may arise.

In most of the countries studied, there is not a specific or special training on how to accompany victims and/or witnesses during criminal proceedings. This happens because most of the victim support workers accompanying those persons to said proceedings are a part of an organisation that provides a lot of types of support, accompaniment being just a part of it. That is, VSW are trained on how to support victims and witnesses, and the accompaniment may be a part of the training, but it is not the main topic.

However, we could find some exceptions to this conclusion, that we think should be taken into consideration when developing and implementing training on the accompaniment of victims and witnesses. For instance, in Spain, the employees of the Victims Assistance Offices must receive special training on family, minors, people with disabilities, gender and domestic violence.



The psychosocial process supervisors in Germany (by whom vulnerable victims are entitled to be accompanied) must complete a special training to be recognised by the state as professionals. This training includes topics on victimology, how to provide support to victims of crime, including aspects of diversity and the ethical and political dimension of such support.

Finally, those volunteering for the Victim and Witness Support Departments in Croatia must complete training on legal, psychological and practical aspects of victim and witness support,



practical preparation for volunteering through shadowing and mentorship and includes the obligation to follow court hearings.



Fig. 1 - Topics to be addressed in training for the accompaniment of victims and witnesses in criminal proceedings.

Although we couldn't find any special requirements or formalities for it, in every country studied the victim/witness must request the competent authority to be accompanied during a diligence. The request may however be rejected based on the eventual prejudice to the investigation, the diligence in itself or to the criminal proceedings as a whole. In Croatia, however, the only justification to refuse the accompaniment is if the chosen person is also called to give evidence.

The need for a request from the victim/witness to be accompanied comes as serious problem when we learn that in most countries there is no obligation to inform victims (and/or witnesses) of their right to be accompanied, even though they are generally entitled to receive information on their rights. Exceptions to this can be found in three countries: in Austria, victims must be informed of their right to be accompanied as soon as the investigation starts and at the latest before the first interrogation takes place; in Croatia and France such information must be provided in the first contact with the authorities (police or judicial authorities).

If victims and witnesses are entitled to be accompanied and the exercise of such right depends on their request, they must be informed that right exists and how they can exercise it.

Some countries make exceptions to the need of requesting the accompaniment, depending on certain types of victims and/or witnesses' age or vulnerability, as follows:

- In Austria, if the person being interviewed is under 14 years old or has a mental illness or disability, it is mandatory that he/she is accompanied by a person of trust. A similar procedure is adopted in England and Wales if the person giving evidence at court is under 18 years old.
- Likewise, in Ireland, if the victim is under 18 years old and is to be interviewed or to give evidence, the competent authority must appoint an appropriate person to accompany him/her, if the victim him/herself does not request it before.
- The same rule is applied in Scotland, however to a broader range of victims and witnesses: not only the child victims but everyone else that it is to give evidence and is deemed vulnerable are entitled to have a supporter to be appointed on their behalf to accompany them while giving evidence in court.

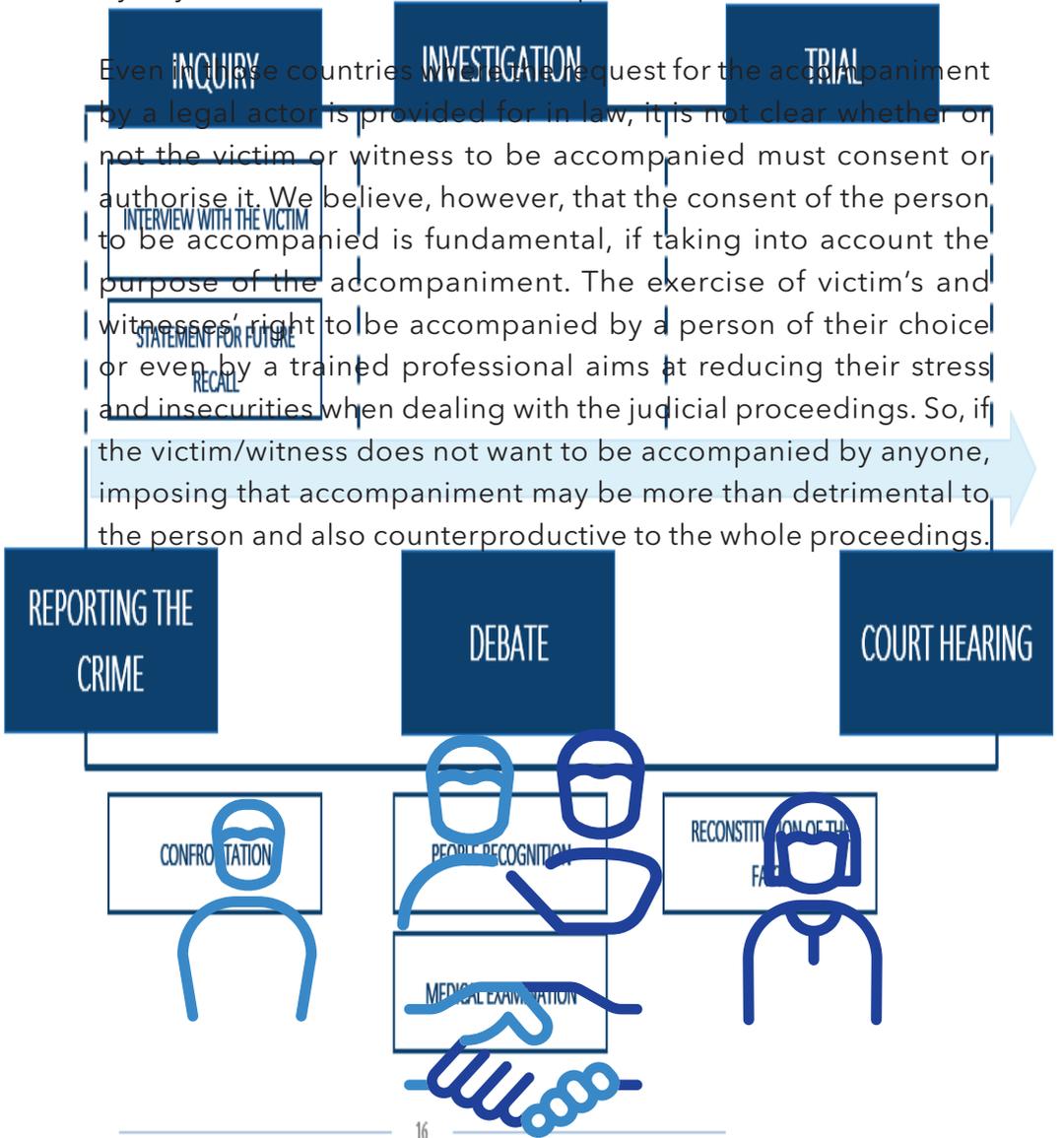
- In Croatia, the Victim and Witness Support Departments may receive a request from the judge, the Attorney General or other members of the court to assessing the victim's needs, including the need to be accompanied while giving evidence.
  - In Portugal especially vulnerable victims and witnesses must be accompanied by a professional, and it is up to the judicial authority to request said professional's presence in the diligence.
- Ireland, Scotland, England and Wales, Croatia and Portugal's legislations clearly establish the authorities' (either LEA or magistrates) competence to make the request for the accompaniment of victims or witnesses. This legal permission's *raison d'être* is the assumption or assessment of the victim or witness's vulnerability and consequent need for accompaniment. In Spain, at least in a program of accompaniment to trial in place in Catalonia, the judicial body or the Public Prosecutor's Office is also entitled to request the accompaniment of a victim to the Victim Assistance Office.

On the other hand, Austria, Germany, Northern Ireland and France have no legal provision allowing neither police officers nor judges/prosecutors to request the accompaniment of victims and/or witnesses. This does not necessarily mean this type of request does not happen, because even though the legal system does not provide it, it does not forbid it either. The lack of legal provision only means the request is not regulated, settling on the basis of informality and depending on the legal actor's will. Therefore we may conclude that legal actors, when believing the accompaniment of the person giving evidence would be beneficial for him/her, can request such accompaniment, even if not provided for in law.

When the legal actor requests the accompaniment of victims and/or witnesses, whether this ability is provided for in law or not, the

Make a visual scheme of the criminal proceedings, identifying in which moments may the VSW be present, explaining what his/her role may be at each one] request is directed to victim/witness support organisations. The legal actors do not request victims/witnesses to be accompanied by anyone else other than trained professionals.

Even in those countries where a request for the accompaniment by a legal actor is provided for in law, it is not clear whether or not the victim or witness to be accompanied must consent or authorise it. We believe, however, that the consent of the person to be accompanied is fundamental, if taking into account the purpose of the accompaniment. The exercise of victim's and witnesses' right to be accompanied by a person of their choice or even by a trained professional aims at reducing their stress and insecurities when dealing with the judicial proceedings. So, if the victim/witness does not want to be accompanied by anyone, imposing that accompaniment may be more than detrimental to the person and also counterproductive to the whole proceedings.



## II. DEFINITIONS

### II. 1. WHAT ARE CRIMINAL PROCEEDINGS?

Criminal proceedings can be defined as sequence of acts set out by law and practiced by certain legitimately authorised persons in order to decide whether a crime was committed and, if so, the legal consequences of it.

Criminal proceedings usually start when public authorities are informed that a crime has been committed, thus starting the investigation phase.

In Portugal , criminal proceedings develop as follows:

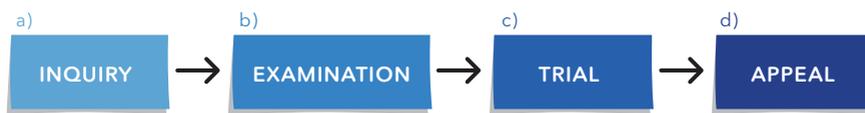


Fig. 2 - Phases of the criminal proceedings in Portugal

#### a) INQUIRY

Once the crime is reported or the complaint filed, an inquiry is launched, which starts the investigation. The criminal investigation encompasses all the actions aimed at ascertaining whether there was a crime, who committed it and their liability, and finding and gathering evidence. The inquiry stage may last from a few weeks to several



months, depending on the amount of evidence to be gathered and the complexity of the investigation.

This is the first stage of criminal proceedings, which is also called the inquiry stage and is carried out by a criminal police force under the supervision of the Public Prosecutor.

At this stage, the police officers in charge of the investigation will collect evidence by, for example:

- talking to the victim, the suspect and the witnesses;
- examining the crime scene for trace evidence;
- identifying the suspect, that is, asking the victim or witnesses to describe in detail the person who committed the crime, whether they had seen this person before and in which circumstances and, ultimately, whether they can identify him/her from among a group of people or a number of photos as the offender of the crime;
- requesting the opinion of expert witnesses: for example, a ballistic expert who analyses bullet trajectory, or a psychologist who evaluates the suspect's personality, or a doctor who evaluates bodily harm, etc.;
- requesting potentially relevant documents such as the report from the health centre where the victim was assisted, or the list of phone calls made by the suspect, etc.



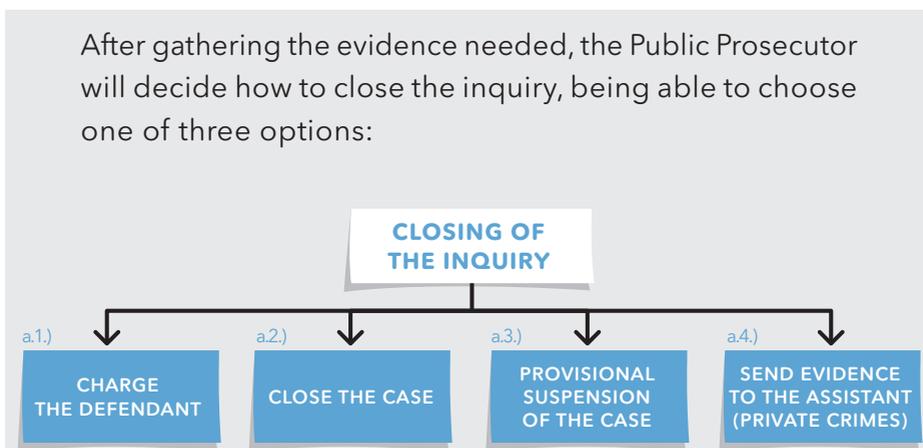


Fig. 3 - Options for closing the inquiry

The decision depends on whether or not the public prosecution service believes that there is enough evidence that the suspect has committed the crime.

### ***a.1.) Charge de defendant:***

If the Public Prosecutor believes that there is enough evidence of the authorship of the crime by the suspect, he/she is formally charged and will stand trial. In the indictment (the official criminal accusation), the Public Prosecutor will state the name of the defendant, which acts are believed to have been committed, what crime(s) he/she is charged with and what evidence the Public Prosecutor intends to present to the court.

### ***a.2.) Close the case:***

If the Public Prosecutor considers that there is insufficient evidence that the crime was committed by that suspect, he/she will then decide not to prosecute - termination of the proceedings and the case is closed. Unfortunately,

not all cases are solved. Sometimes it may not be possible to find out who committed the crime or there is not enough evidence for the Public Prosecutor to take the case to court. When several crimes are involved, the defendant may be charged with only some of them, and the other charges can be dropped. A closed case can be reopened if significant new evidence appears.

### ***a.3.) Provisional suspension of the case:***

This is an opportunity for the defendant to prevent him from being convicted and thus having a criminal record: for a certain period of time established by the judge, the case can be suspended and, in return, one or more obligations are imposed on the defendant. For example, to pay compensation to the victim, to donate a certain sum of money either to the state or to private charities, to provide a community-interest service, not to live in particular areas, or not to contact specific people, etc. If the suspect complies with these obligations during the suspension period, then the case is closed. Suspending the case temporarily only applies to crimes punishable with a term of imprisonment of not more than 5 years if the suspect agrees and, when the victim has the status of assistant, the victim also agrees.

### ***a.4.) Send evidence to the assistant:***

In the case of a less serious crime - which usually takes the nature of a private crime - the procedure is different. After filing the criminal complaint, the victim has 10 days to apply for the status of assistant. This status allows the victim to more actively participate in the case, by being able to intervene in the inquiry stage, to write

an autonomous indictment and consequently present different evidence. The assistant's role is to cooperate with the Public Prosecution Service in the gathering of sufficient evidence to prosecute. In order to be granted the status of assistant, the victim has to have a lawyer and pay the court fee. When private crimes are involved, it is compulsory for the victim to have the status of assistant<sup>1</sup> since, at the end of the inquiry stage, the Public Prosecution Service, rather than deciding whether to charge the suspect or not, will send the evidence gathered to the assistant to decide whether or not they wish to press charges against the suspect, that is, whether or not to take the defendant to court.

## b) EXAMINATION

**This stage is optional** and only takes place when requested by the victims in their role as assistant in the proceedings, or the suspect, because they do not agree with the decision of the Public Prosecutor at the end of the inquiry stage.

The examination stage is therefore a stage where the grounds for the Public Prosecutor's decision are discussed and where both the victim and the defendant can submit evidence which, for whatever reason, was not taken into account in the investigation stage, such as new witnesses or documents.

<sup>1</sup> For other kinds of crimes, the status of assistant is optional, although it may be very useful and effective, especially to have a say in deciding on the provisional suspension of the case, agreeing or otherwise to close the case, or filing applications and lodging appeals.

In this stage, a judge - called an examining judge<sup>2</sup> - will review the evidence gathered during the inquiry stage, any other evidence that should be obtained, or that is submitted at this stage and is considered to be relevant. The examining judge will question the victim and the defendant whenever he/she deems it necessary and whenever they request it.

The examination stage ends with a discussion known as the examination discussion, which is managed by the judge and involves the Public Prosecutor, the defendant and the defence lawyer, the assistant and his/her lawyer.

At the end of this discussion, the judge decides whether or not to confirm the Public Prosecutor's decision in the investigation stage:

### ***b.1.) Indictment:***

If the Public Prosecutor (or the assistant, in private crimes) decides to charge the suspect at the end of the inquiry stage and afterwards the examining judge decides to proceed with the case, the defendant will go to trial. This decision may not be appealed.

If the Public Prosecutor decides not to charge the suspect but afterwards the examining judge issues an indictment decision, the defendant will go to trial. This decision may be appealed.

---

<sup>2</sup> The examining judge cannot intervene in the later stages of the proceedings.

### ***b.2.) Non-indictment:***

If the examining judge decides to dismiss the case, the defendant will not go to trial. This decision may be appealed by the Public Prosecutor and the assistant.

## **c) TRIAL**

After taking the decision to prosecute, whether by the Public Prosecutor or the examining judge, the case moves on to the trial court and the defendant will be tried on indictment.

The trial is a hearing that takes place in a courtroom. The purpose of the trial is to decide whether there is enough evidence to convict the defendant of the crime of which he/she is accused of and, if so, to impose a sentence. It is important to know that even when a sentence is imposed on the defendant, it does not mean that he/she will be going to prison. There is a wide range of sanctions that can be imposed, prison time being just one of them.

At the trial, it is also discussed whether the victim and any other person who suffered losses as a result of the crime is entitled to receive compensation, upon a prior request for it, usually within 20 days followed the notification of the Public Prosecutor with the decision to prosecute or the indictment from the examining judge.

Trials are almost always open to the public, that is, anyone can go into the courtroom and attend the hearing. There are a few exceptions, however: the Code of Criminal

Procedure allows for the Judge to exclude the publicity of the trial, in order to protect the victim's privacy. This is a particular relevant provision especially in cases involving sexual crimes or human trafficking. On the other hand, victims who are deemed as especially vulnerable are also entitled to participate in the trial without public.

Trial can be divided in 3 main stages: the preparation for trial, the trial and the delivery of judgment.



Fig. 4 - Stages of trial

### ***c.1.) Preparation for Trial***

After receiving the case file, the Judge (who is not the same judge as the examining judge) schedules the trial date and issues a writ of summons to the defendant, as well as a written notice, which is sent by letter to all the people who have to participate in it.

Concerning the preparation of victims for trial, please find more in Sections V., VI. and VII. of this Practical Guide.

## c.2.) Trial

The trial hearing is chaired by the Judge. In cases involving more serious crimes, the court is composed of three judges and is called a collective court (a panel court). For some of the more serious crimes, there may be a jury trial, comprising a panel of 3 judges and 4 citizens, if requested by the Public Prosecutor, the defendant or the assistant.

The other people present at the trial are: the Public Prosecutor, the court officer, the defendant and his/her lawyer, the assistant, when the victim has been granted this status, and his/her lawyer, the civil parties, that is, the people who have filed a civil action for damages against the defendant because the crime caused them some kind of loss, the witnesses and the expert witnesses.

Due to the principle of immediacy<sup>3</sup> and the utmost interest in the spontaneity of statements, ideally, the trial takes place without interruption from start to finish and foresees to gather all evidence in the case, by means of examining defendants, witnesses, expert witnesses, the assistant and civil parties. As it often

---

<sup>3</sup> The principle of immediacy requires that all evidence should be presented in court in its most original form, which in turn allows the Judge to have a direct contact with the evidence, therefore enabling a better understanding of the facts. This principle entails that the judgment can only be delivered by those who have been present when the evidence was given and discussed by all parties to the proceedings. Besides, it also has a timely dimension: that the judgment is given as soon as possible after the hearing has ended. Accordingly, the principle of immediacy thus requires a relationship of proximity (physical and temporal) between the parties to the proceedings and the court, so that the court can have its own (and authorised) perception of the elements which will serve as a basis for the reasoning of the judicial decision.

becomes lengthy, it can be overwhelming to the victim and increase distressful feelings.

The trial starts by identifying the defendant and then the judge reads the charges. Next, the Public Prosecutor and the lawyers, if they wish, have their turn to speak so that they can describe briefly what they intend to prove. It is however normal to move directly on to the evidence stage.

All the evidence is presented at the trial to the judge and to the other participants to make their experience with the evidence as direct as possible. The defendant is examined, and the witnesses questioned even if they had already given evidence during the investigation. The expert witnesses may be asked to explain the exams they conducted and documents such as medical reports are reassessed.

The first person to be questioned is the defendant. He/she is entitled to refuse to provide any statement since no one can be forced to testify against themselves. However, if he/she decides to make a statement, he/she can choose one of two options:

- confesses to the facts that he/she is accused of, the crime is considered proven and therefore, in principle, it is not necessary to submit further evidence. If there is no further evidence to be submitted. e.g. if there is no civil action for damages, the trial moves directly on to the closing statements;

- does not confess, then, in general, the victim is called to testify.

In case the victim is called to testify, the Judge starts by asking questions about his/her identity and the victim must remain standing while answering these questions. Next, the Judge hands over to the Public Prosecutor, who will ask the victim to describe the facts. It is normal for the Public Prosecutor to interrupt victims' responses sometimes with questions because it may be necessary to give a better or more detailed explanation of some aspects that are less clear. It is then the turn of the lawyers who are present to ask questions. It is possible that victims feel uncomfortable with some questions asked by the defence lawyer and think that they are challenging what victims went through, their experience concerning the wrongdoing.

Next, the witnesses are examined. Any witness under the age of 16 may only be questioned by the judge, but the other participants can ask the judge to ask the questions they consider relevant.

The defendant may be removed from the courtroom while some witnesses are testifying, particularly the victim, if the court considers that his/her presence may deter the victim from telling the truth, or if he/she is under 16 and there are reasons to believe that testifying in the presence of the defendant may have a serious adverse effect.

Expert witnesses are then heard if this has been requested or when the court wants to clarify any detail of the exams they conducted. This usually occurs after the witnesses have testified.

All the oral evidence given in court is recorded so that, if there is an appeal, the appeal court can listen to the recordings and does not need to have the participants called to testify again.

Apart from witness testimonies, other evidence, such as documents, may be relevant and these must be included in the case file in order to be taken into account. The judge may also consider it important to visit the crime scene in order to get to know it better and for any re-enactment of the facts in the presence of all the participants in the proceedings.

After the evidence stage, the judge will ask the defendant some questions about his/her personal, family, professional and financial situation. The answers to these questions are taken into account in the court's decision, particularly with regard to sentencing: for example, the defendant's financial situation is taken into account when deciding which fine to impose.

Afterwards, the Public Prosecutor, the assistant's lawyer, the lawyer for the civil parties and the defence lawyer are entitled to make their closing statements, that is, to tell the judge what they consider was proven or otherwise and, if they think it was proven that the defendant committed the crime, which punishment should be

imposed. After these statements, the defendant may still, if he/she wishes, add anything else he/she considers important for his/her defence.

Besides being called to give evidence as a witness, the victim can participate in the trial as an assistant or as a civil party.

As an assistant, the victim has an active role in the trial through her/his lawyer; he/she cooperates with the Public Prosecutor in producing evidence of the facts described in the indictment and his/her lawyer may, for example, submit evidence, cross-examine the defendant, the witnesses and the expert witnesses. At the end of the trial, the assistant may also present his/her arguments, that is, give his/her opinion on the evidence presented and on whether or not the defendant should be convicted.

As a civil party, the victim will defend his/her right to damages. The victim is not requested by law to have a lawyer if her compensation request is no higher than €5,000. Where victims have a lawyer, the latter may cross-examine the defendant, the witnesses and the expert witnesses about aspects related to the claim for damages, particularly about the harm suffered by the victim as a result of the offence.

Whatever position victim's take in trial, his/her presence is very important not only for the important role it can play in the recovery process, but also for the good administration of justice and the search for the truth.

### **c.3.) Sentencing**

If the case is a simple one and the decision is easy, the judge may announce it immediately. However, it is more common for the judge to schedule a date some days later for reading the decision.

The sentence is the decision in the proceedings and includes the facts which the judge considers proven, the unproven facts and the evidence on which it was based.

If the defendant is convicted, the decision also includes the type of sentence and the information taken into account for deciding on the sentence.

In cases tried before a collective court (panel court), the decision is reached by a simple majority of the votes of the 3 judges. In cases tried by a jury court, the decision is also reached by a simple majority of the votes cast by the 3 judges and the 4 jurors. When the decision is made by a collective court or by a jury court, it is called a ruling.

The defendant may be convicted of one or more of the crimes he/she was charged with and acquitted of others, or even acquitted of all the crimes with which he/she was charged. If the defendant is convicted, the main sentence may be either an actual or suspended term of imprisonment or a fine. A secondary sentence may also be imposed.

The participants in the proceedings are entitled to receive a copy of the sentence, generally without further request. In any case, anyone is entitled to read the sentence and should request it at the administrative office of the court if they wish to do so.

#### d) APPEAL

If the defendant, the assistant or the civil parties disagree with the sentence, they can lodge an appeal via their respective lawyers. The Public Prosecutor may also lodge an appeal, even if only in the defendant's interest.

The appeal must be lodged in writing with the court where the trial took place within 30 days from the hearing where the judge read the sentence or, in case the party nor his/her lawyer was not present, from the date they received a copy of the judgment. In particularly complex cases, the time limit for lodging the appeal may be extended by another 30 days.

The appeal must state the reasons for not agreeing with the sentence and must weigh up the evidence submitted and/or whether the applicable legal procedures were followed.

Any parties to the proceedings who are affected by the lodging of the appeal are notified so that they may lodge their response within 30 days.



The appeal and the responses to it, along with any other elements relevant to the case, are then sent by the trial court to the court of appeal. In some cases, for example, when it is only a point of law that is being challenged, the appeal is sent directly to the Supreme Court of Justice.

After the appeal is examined by the Judges and by the Public Prosecutor, it is assigned to the appeal court. Afterwards a hearing may be scheduled at which all the parties affected by the appeal will have the chance to present oral arguments about the facts and the reasoning for disagreeing with the challenged decision. This hearing will only take place if the parties requested so or if the judge believes there is a need to re-examine the evidence given in the first trial. Once the appeal hearing has ended, or a few days later, the appeal court makes its ruling.

An appeal can be lodged not only against the sentence but also against other decisions made at different stages of the proceedings - for example, the final decision in the examination stage.

When it is no longer possible to lodge an appeal, either because the time limit has expired or because the law does not allow further appeals, the decision becomes final or, in other words, the case has been judged.



## II. 2. WHO'S WHO?

### II. 2.1. Who is a victim?

According to the Victim's Directive, a victim is a natural person who has suffered harm, including physical, mental or emotional, or economic loss which was directly caused by a criminal offence. In this respect, also family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death are considered as victims.



In Portugal, most acts that are considered a criminal offence are laid down in the Criminal Code. However, it is not exhaustive as some offences are laid down in disperse legislation, e.g. drug trafficking, possession of an illegal weapon, etc.

Article 67.º-A of the Portuguese Code of Criminal Procedure defines victim of crime as someone who has suffered damage, including an attack on his/her physical integrity, or a psychic, emotional or moral damage, or damage to property, directly caused by a crime. The family members of a person whose death was directly caused by a crime and who have suffered damage as a result of that death are also considered victims under Portuguese law.

The victim of a crime has a bundle of rights, namely the ones set out in the Victim's Directive, transposed in Portugal by the Victim's Statute. Additionally, there are some specific frameworks that cumulate with the general framework; the statute and rights of victims of domestic violence are provided for in Law no. 112/2009, that sets out the Legal Framework



for the Prevention of Violence Domestic and Protection and Assistance to its Victims and the statute and rights of victims of human trafficking provided for in Article 109.º of Law no 23/2007 of 4th July.

In criminal proceedings, the victim is almost always asked to participate as a witness, as his/her direct knowledge of what happened is very important for searching for the truth.

## II. 2.2. Who is a witness?

A witness is anyone who has direct knowledge of facts which are important for the case and therefore can be called to testify, as they saw the crime taking place or know something important for discovering the truth. Needless to say, most cases victims are the fundamental witness of crime.



Witnesses can nonetheless be considered as indirect victims for witnessing a crime or a violent situation can cause emotional distress.

In Portugal, the Code of Criminal Procedure does not define witness, although there are plenty of references to witnesses in it. A definition of witness may be found in article 2.º, a) of Law n.º 93/99, of 14th July (Witness Protection Law), according to which a witness is any person who, regardless of their status under the procedural law, has the information or knowledge necessary for the disclosure, perception or appreciation of facts which are the subject of the proceedings.





In principle, anyone who is called as a witness must testify, with a few exceptions: the defendant's close relatives, who may refuse to testify, and people covered by professional secrecy, such as journalists, doctors and lawyers. However, they may still be ordered to testify if the crime is a serious one and their testimony is crucial for seeking for the truth.

Any witness who is called to testify must attend the court hearing on the date and at the time and place stated in the letter of notification, follow the instructions given as to how to give their testimony, and answer questions truthfully. Otherwise, they may be charged with the crime of perjury.

Witnesses are not required to provide their home address for the purposes of court notices. They may opt to provide their work address or another address to avoid having the other participants in the proceedings know where they live.

Witnesses may be accompanied by a lawyer every time they need to give evidence. Their lawyer, when necessary, may inform them of their rights but cannot intervene in the questioning.

On the day of the trial, witnesses are not allowed to be in the courtroom before testifying, so they should wait in the witness waiting area and enter the courtroom only to give their evidence.

Witness protection measures may be implemented whenever there are risks to the witness's life, physical and psychological integrity, freedom and property of considerably high value because of their contribution to proving the crime. These measures may be extended to include the witness' relatives and other people close to them.





In any case, the defendant may be removed from the courtroom while a witness, particularly the victim is testifying, if the court considers that the defendant's presence may deter the witness from telling the truth or if he/she is under 16 and there are reasons to believe that testifying in the presence of the defendant may have a serious adverse effect.

Witnesses are entitled to be reimbursed the expenses incurred by participating in the proceedings.

### **II. 2.3. Who is a victim support worker?**

A victim support worker (VSW) is a person with specialised training in the field of victim support, whose job is to identify, accompany and provide support to victims of crime.



The VSW understands how the victim feels and what they go through after experiencing a crime. In that sense, their job is to help the victim overcoming or, at least, mitigating the impacts of the crime. For this purpose, a VSW is endowed to provide several kinds of support, including emotional, psychological and legal support, in addition to help in solving practical issues that followed from the crime, e.g. providing information, helping with applications to a public benefit, etc..

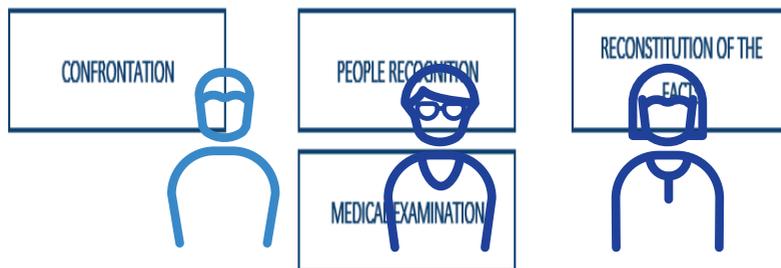
To perform these duties, VSW have a number of professional and personal skills. In addition to holding academic qualifications in an area closely related to the needs of crime victims, such as psychology, law, social services, among others, they have received specialised training in victim support. Therefore, they have in-depth knowledge about the consequences of



victimisation, victim's reactions, available support services, etc., over which they can provide information.

At a personal level, VSW are able to listen to the victim, understand their fragility at this time and provide emotional support, accept what the victim is willing to tell and what he/she is not willing to talk about and respect their decisions, even though they may not agree with such decisions because they do not consider them in the victim's best interest.

When interacting with the justice system, victims can be accompanied by VSW. In these moments, in order to reduce anxiety, it is not only important for victims to know what to expect from each legal step beforehand, as it is also crucial to have someone they trust with them. In this respect, VSW can provide support to both victims and witnesses by means of accompanying them to court, to the police and while forensic exams are being conducted, in addition to show them the court premises, explain how the judicial procedure works and answer all the doubts and questions they might have regarding the legal procedure.





### III.

# WHY ACCOMPANY VICTIMS AND WITNESSES TO CRIMINAL PROCEEDINGS?

Although each crime affects victims differently, most victims experience emotional and psychological effects, including feelings of anxiety, shame and injustice. In addition, most victims have limited knowledge regarding the justice system and what to expect from it which, coupled with the system failure as to adopting a victim's sensitive approach, gives rise, often times, to feelings of uncertainty and anxiety when interacting with the criminal proceedings and legal actors.

Recent research (2019) carried out by the Fundamental Rights Agency found that a vast number of victims claim to receive no information about the possibility of being accompanied during the court trial by a person they trust. Moreover, even at times that victims are well-informed and decide to be accompanied by a VSW, these practitioners are often not allowed to stay with the victim during the court trial. Furthermore, many victims are unhappy with the level of involvement offered to them in the criminal proceedings.

In the same research, victims have repeatedly stressed the importance of being accompanied during legal proceedings by a person they trust due to the stressful feelings they experience in those situations. Victims have also stated that they appreciate support in preparing for the court trial, e.g. allowing them to visit the courtroom in advance of the trial and learn where the various people would be, who speaks first, etc.



As to victims' rights, it should be highlighted the victim's conflicting roles as a witness and as a party to the proceedings. On the one hand, victims are expected to give impartial testimonies by law enforcement and judicial authorities while, on the other hand, victims, who have a direct experience about the facts, will struggle with feelings of anxiety to relive the crime experienced while testifying which in turn can give rise to secondary victimisation. In this sense, VSW shall prepare victims for this experience that will necessarily be somewhat emotional and empower them to be the most objective and accurate possible, so that, by the end it it, they can feel assured they did their best to bring justice to the case and hopefully find some closure.



As law enforcement, judicial authorities and defence lawyers usually focus on victims only as witnesses, it is paramount that victims are allowed to be accompanied by VSW during every step of criminal proceedings so that they can have their rights better ensured as victims. Due to the specialised training of VSW, they are better equipped to assert victim's rights when they are not fully endorsed by judicial authorities. Accordingly, VSW shall not only prepare the victim to the diligence by means of advising them what type of questions will be asked but also by bringing his/her awareness to the importance of being straight to the point when answering. Emotions, on the other hand, shall not be undermined; a fair balance must be struck for the purposes of protecting the victim from secondary victimisation and to secure better judicial outcomes. In doing so, the practice of accompaniment is of added value for both the victim and the smooth running of the justice system.



Therefore, the main objective of accompaniment is to tackle secondary victimisation and its harmful effects on the judicial process, which is attainable by focusing on three pillars:

- (I)** promoting an effective support to victims and witnesses during judicial proceedings;
- (II)** contributing to reduce their anxiety regarding the judicial proceedings and;
- (III)** promoting an effective exercise of victims' rights within the justice system.

In this context, a VSW may not only provide emotional support (help the victim coping with trauma, help with getting acquainted with the judicial system, including developing resilience to face the defence lawyer and the offender) but may also provide legal and practical information, thus empowering the victim to make more informed decisions.

Besides, victims who are accompanied are better equipped to deal with the justice system, which in turn, will increase the effectiveness of criminal proceedings, as a cooperative victim is more likely to contribute to the proceedings and evidence gathering.

Additionally, victims attribute great importance to the relationship with the VSW, based on trust, commitment and confidentiality, which leads to conclude that private support organisations may be better suited for providing victim support and accompaniment than relying on public authorities.

In that connection, there are several advantages that can be pointed



out concerning victim's accompaniment to criminal procedures; on the one hand, it alleviates trauma - which contributes for a better recovery - and prevents secondary victimisation as it helps the victim with repeated questionings and examinations carried out by legal actors. On the other hand, it directly culminates in a better quality of evidence provided, facilitating a good judicial outcome and subsequently favouring the good administration of justice. In this sense, accompaniment can improve efficiency of criminal proceedings.

Similarly, the adoption of a more comprehensive support service, including accompaniment practices, will have a positive impact on victims and witnesses, resulting in victims better equipped to deal with the justice system. The specialised support provided by a VSW focuses on the victims' needs and creates, at the same time, a link between the legal actors involved, allowing easier communication between all and contributing to the creation of a space for true victim support within the judicial system.

### III. 1. TO WHICH DILIGENCES MAY THE VICTIM OR WITNESS BE ACCOMPANIED TO?

#### III. 1.1. Portuguese framework on accompaniment of victims

There are situations where the presence of the VSW is foreseen and is mandatory by law. Unless it is contrary to the interests of the victim or witness or it affects the good course of the proceedings, they may be accompanied by a person of their choice at the time of the first contact with the competent authorities. The victim may require the accompaniment in



case, due to the impact of the crime, he/she needs assistance to understand or be understood during the diligence.

Under the Victims' Statute, when the victim is particularly vulnerable, it is provided by law that he/she may be accompanied by a specially trained professional when testifying with resource to video or teleconferencing, that is, a VSW, who is previously designated by the Public Prosecution or by the court.

The same Statute states that, during a statement for future recall (a judicial act that is conducted by the judge and where the Public Prosecutor, the lawyers and the defence attorney may, under his order, make additional questions) , the victim must be supported by a specially trained professional, again, a VSW previously nominated by the court.

Under the Domestic Violence Law, the victim may request to be accompanied by a VSW when providing statements or testifying with resource to video or teleconferencing, or by any other professional that is there to provide psychological or psychiatric support. When providing a statement for future recall, the victim of domestic violence is entitled to do it in an informal and confidential environment and to be accompanied by a VSW or whoever is accompanying her/him to provide psychological or psychiatric support, previously authorised by the court.

The Witness Protection Law also foresees that, whenever the judicial authority becomes aware of the special vulnerability of the witness, the authority must designate a social worker or other professional specifically trained to accompany the witness (a VSW) and, if deemed necessary, the witness may benefit from



psychological support by a trained professional. The judicial authority presiding the diligence may authorise the presence of a social worker or any other person accompanying the victim beside the witness during the course of that judicial act.

The Criminal Procedural Code also foresees that, when the victims is a child, the statement for future recall must be done in an informal and confidential setting and the child must be supported by a specially trained professional, who must be previously designated for the diligence.

In short:

## Law no. 130/2015, of 4th September (Victim's Statute):

### Article 12/3

Any victim **may be** accompanied by someone of their choice in their first contact with authorities – that are mainly police officers or the Public Prosecution Office's services – in order to exercise their right to understand and be understood (which foresees a communication difficulty as a pre-requisite). This accompaniment, however, may be rejected if the authorities believe the presence of the accompanying person may jeopardise the proceedings or is contrary to the victim's interests.

### Article 23/2

Especially vulnerable victims **must be** accompanied by an especially skilled professional, previously **nominated** by the prosecutor or the judge.

### Article 24/5

Especially vulnerable victims who are meant to give a statement for future recall **must also be** accompanied by an especially skilled professional, previously **nominated** by the court.

### Law no. 112/2009, of 16th September (Domestic Violence Law):

#### Articles 32/2 and 33/3

Victims of domestic violence who are called to give a statement for future recall **must be** accompanied by the VSW or other professional who has been giving him/her psychological or psychiatric support, **if** previously **authorised** by the court.

### Law no. 93/99, of 14th July (Witness Protection Law):

#### Article 27

Witnesses who are deemed especially vulnerable **may be** accompanied in all the procedural acts they must participate in.

### Code of Criminal Procedure:

#### Article 271/2

The accompaniment of victims is mandatory when victims are meant to give statement for future recall, and they are minors (under 18 years old) who have fallen victim to a crime against sexual freedom and self-determination. The accompaniment must be provided by an especially skilled professional, previously **nominated** by the court.

It is important to note that when the law reads authorised, means that it is not mandatory, whereas when the law sets out that an especially skilled professional must be nominated means that the accompaniment is mandatory.

Furthermore, the especially skilled professional required for the accompaniment of children when giving statement for future recall (article 271/2 Code of Criminal Procedure) is of a different training, in a sense that his/her tasks differ from the professional required for other especially vulnerable victims or witnesses (Article 24/5 Victim's Statute, Article 27 of Witness Protection Law and Article 23/2 of Victims' Statute). In this sense, while in the former case the professional must ensure that the space and environment for the examination of the child is friendly and adequate, as well as ensuring that the examination is carried out in accordance with the level of understanding and maturity of the child, aiming at the most spontaneous and truthful testimony, having to, at times, rephrase the questions asked by the judicial authority, the latter professionals must prepare and support the child and other especially vulnerable victims for the interaction with the justice system.



In this respect, it is also worth noting that there is no obstacle to both tasks being performed by the same VSW, so to say, as long as he/she has specialised training to do so.

Other than that, victims may be accompanied by someone of their choice, in several legal steps: filling the complaint with the criminal police, during the investigation phase and while undergoing medical exams, etc., unless, after a personal



evaluation by the authorities, the victim is given the statute of especially vulnerable victim. According to the existing law, only in that case he/she is entitled to be accompanied by an especially skilled professional, typically a VSW. Nevertheless, any victim can resort to victim support services and ask to be accompanied by a VSW since the start of legal proceedings.

It can be therefore concluded that in the Victim's Statute and the Code of Criminal Procedure, except in the first contact with authorities, victims are only allowed to be accompanied if they are deemed especially vulnerable. Moreover, this accompaniment is led by VSW, there being no provision of accompaniment by someone of the victim's choice who is not a professional.

### **III. 1.2. Other diligences not foreseen in law that victims/witnesses should be allowed to be accompanied to**

In any case, VSW are advised to be proactive in defending the victim's best interest. In this sense, any time victims show interest in being accompanied by a VSW, the latter shall take the initiative to ask the body chairing the diligence, whoever it can be, whether they authorise victims to be accompanied by a VSW. This applies to any proceedings regardless of a criminal nature, including regulation of parental rights for instance.

Although the accompaniment is foreseen in some legislation, we believe that when the needs of the victim or witness so dictate, the accompaniment should be requested or allowed in other diligences not expressly provided for. e.g. although the law does not



provide for the accompaniment of a victim or witness during their first interview with the Public Prosecutor or during the trial, the stress, anxiety and lack of knowledge about the criminal procedure can be similar (or even more severe) than that felt when they are called to give a statement for future recall.

The need for the accompaniment may be evaluated either by the VSW, when the victim or witness has already started a support process within the victim support organisation, or by the LEA or judicial authorities. In the first scenario, it is up to VSW to request the accompaniment and justify its need. In the latter, because the VSW does not know the victim/witness yet, the LEA or judicial authority must ask for the VSW's cooperation.

The takeaway is that VSW do not settle to what is provided by law - concerning the statute of vulnerable victim and the catalogue of diligences where they can be accompanied - when victims ask to be accompanied by an especially skilled professional of their choice. Bearing in mind that what matters the most is the ultimate protection of victim's best interest and rights, any victim should be able to seek for support and to be accompanied during any diligence remotely related to the wrongdoing.





## IV. THE VICTIM SUPPORT WORKER'S ROLE IN THE DILIGENCE

Bearing in mind the impacts of crime on victims, it is vital for their recovery to have an expert on their side who can assist and accompany them throughout the legal proceedings, thereby reducing feeling of anxiety and to ensure that victims are provided with all the necessary information regarding the legal steps and actors. In this connection, VSW are equipped with the right knowledge and practice on how to advise and support professionally a victim of crime, assuring their rights are not merely theoretical but put into practice.

More specifically, the VSW plays a twofold role when accompanying victims of crime in court diligences:

- Preparing and supporting victims and witnesses while in contact with the justice system. Examples: information on victim's rights in an easy comprehensible manner and practical information on how to exercise them or which kind of services/facilities are available for victims, promoting a court familiarisation visit before the court proceedings, ensure that the victim does not have to face the offender in court or otherwise prepare the victim for that encounter, explain victim's rights and what is going to happen in the diligence, etc.;
- Support victims and witnesses while the Judge is performing and conducting victims' and witnesses' examination, especially when they are especially vulnerable or children, e.g. make sure the space of the diligence is friendly and able to ensure a reliable





testimony, ensure that the examination is performed taking into account the age and the degree of development of the child, ensuring that questions are asked in a manner that does not reinforce trauma thus causing secondary victimisation, and that victims fully understand the questions posed. In doing so, the VSW is not only aiding the victim as it is also contributing to a better quality of the diligence.

Intervention of VSW during victim and witness examination is a delicate subject, as the spontaneity of statements must be preserved. That said, VSW may nevertheless clarify questions, ask the legal actor who posed the question to repeat it, and ask for a recess, in case the victim is becoming anxious or distraught. In some cases, the judges can even allow the VSW to rephrase some questions for a better understanding of the victim or witness.

In any case, to be on the safe side, the VSW shall first clarify with the judge what can be the extent of the support provided acceptable by the court in order to prevent situations where the VSW is asked to leave the room for having interfered with the statements. For this to happen, it is important to try to build a relationship of trust also with the judicial authorities and court clerks. If needed, the VSW should be able to contact the court and ask to talk to the Public Prosecutor or the judge, in order to discuss the extent of his/her intervention and/or to provide information on the victim's needs.



In addition, when an expert is appointed to carry out medical exams on victims, the VSW shall ensure the impartiality of that expert. In case of reasonable doubt, such must be informed to the judge by the VSW.





Regarding travelling costs, the VSW can also take the initiative to ask for the reimbursement of expenses that victims and witness incurred with going to the diligence.

As a closure to the accompaniment practice, a follow up support must be provided by means of contacting the victim to assess whether he/she needs more or other kind of support, thus ensuring that the support given is not entirely linked to the criminal proceedings, but rather to the victim's needs.

## V. PREPARING THE DILIGENCE

### V. 1. OVERALL VIEW OF THE PREPARATION PHASE

There are three aspects that shall be taken into account by the VSW in the starting of the preparation phase:

- How the victim feels and how he/she sees his/her participation in the diligence, which should be taken as the starting point for the preparation;
- The fact that it is not always possible to carry out the preparation beforehand, so that it will sometimes be limited to a brief prior contact on the day of the diligence;
- The fact that the preparation of certain groups of victims has to take into account their particular needs.



In any case, the first thing to do is to get in touch with the victim. Some victims will request accompaniment directly to the victim support organisation, whether they are already being provided with support there or not. In these cases, the VSW will get to know the victim in advance to the diligence which facilitates the building of a trustful relationship.

In other cases, the judicial authority contacts directly victim support services so that a VSW can be appointed to accompany a specific victim. In these cases, the VSW has no prior knowledge about the victim and often times the court does not notify the victim informing that the accompaniment by a VSW has been requested for that victim. Whether or not the victim knows about the VSW, once victim support services receive the court notification for accompaniment, the VSW must make a request to the court asking for victim's contact information in order to try to make contact before the day of the court proceedings. Other important information that the VSW should know about includes:



- Contact (if the victim is a minor, the contact of the legal representative). The purpose of providing the contact is to allow the VSW to get in touch with the victim or witness before the day of the diligence. This allows for a wider time frame to develop a relationship of trust and therefore make the victim or witness more at ease with the accompaniment by the VSW.
- A brief history of victimisation, which can be done by sending a copy of the filed complaint. This allows the VSW, not only to know which crimes are being investigated, but also not to pose unnecessary questions to the victim or witness, avoiding



secondary victimisation. Furthermore, if an organisation has a set of VSW who are more trained in providing support for a certain type of victims, it allows for the request of accompaniment to be directed to a more suitable VSW.

- Information of what is the relationship between the victim/witness and the offender/defendant
- Consent of the victim to be accompanied (if a minor, the consent by his/her legal representative).

In case the victim is contacted and does not want to be accompanied, the VSW must respect the victim's decision and inform the court accordingly, requesting that his/her presence be waived.

Where the victim is already receiving support from a victim support organisation but the court notifies another organisation to accompany that victim, the VSW who received the notification must get in contact with the organisation that is providing support to the victim and ensure that they have a VSW to accompany the victim in that legal proceeding, even giving tips or advice if necessary. Finally, the VSW must inform the court that the victim will be accompanied by a VSW from another organisation.

After the first contact with the victim, the VSW must go on to the next stages of preparing the diligence, including carrying out a personal and circumstantial assessment of the victim situation, namely how he/she feels, particular needs, if he/she meet the criteria for applying to the statute of vulnerable victim, etc.. It shall be stressed that every assessment must be done on a case-by-case basis.



### **V. 1.1. Knowing the victimisation history**

Following the first contact with the victim, the VSW must carry out a personal and circumstantial assessment of the victim situation, including emotionally, if physically in peril or even financially. As a result, the VSW will have enough information to decide whether the victim meets the criteria to apply for the statute of especially vulnerable victim. If the VSW believes it is the case of an especially vulnerable victim, then he/she must make an application to the court, duly substantiated, requiring it.

This request might include the possibility of the victim testifying through the statement for future recall, which means that he/she will be examined prior to the trial, thus avoiding several different examinations (as the former is recorded) and facing the defendant.

### **V. 1.2. Differentiating the approach**

After the assessment conducted in 5.1.1., VSW shall see to design their accompaniment approach in accordance with the particular needs and experience of each victim. In that sense, VSW shall make an assessment of the victim needs combined with the victimisation history in order to better customise the support given.



#### **V. 1.2.1. Children and youngsters**

If the victim is a child, the first contact must be done with the parents or the legal guardians. In this conversation, the VSW must firstly explain the objectives of the accompaniment practice. Secondly, the VSW must ease parent's concerns and collect all the information



possible regarding the facts of the crime and the child, so that when interacting directly to the children, the VSW knows beforehand what topics should avoid in order to mitigate and not promote feelings of anxiety to the child.



### **V. 1.2.2.**

#### **People with some type of disability**

Victim's disabilities must also be taken into account; for instance a physical disability may influence the victim's mobility in the place where the diligence will take place, an intellectual disability will demand for adequate and specialised support and influences how the VSW should provide the necessary information and clarification.



### **V. 1.2.3.**

#### **People with different cultural and religious backgrounds**

Different cultural and religious backgrounds shall also be considered when assessing victim's needs for designing the accompaniment approach. In this sense, the VSW must try to understand whether the victim has a different cultural and/or religious background that may require a different preparation to the diligence, e.g. not being used to adversarial proceedings, showing particular needs or susceptibilities regarding the judicial system in Portugal, etc.

In certain types of crime such as female genital mutilation, forced marriage, etc. particularly sensitivity



and expertise are needed to contact, accompany and support these victims.

The VSW shall also be special attentive and sensitive to the fact that other judicial actors may not be familiarised with the different cultural and/or religious backgrounds of the victim. If so, the VSW must act in order to raise awareness of magistrates, lawyers, officials and police forces.

### V. 1.3. Ascertain how the victim feels

This step is transversal to every victim; VSW ascertain how victims feel. This means engaging in a conversation that will enable the VSW to promote the sharing of feelings; anxiety, fears, etc. In addition, the VSW must ascertain if the victim is familiarised with the judicial system or otherwise if the lack of knowledge causes distress on victims.

During the preparation session, it is important that VSW explores with the victim how he/she feels about the diligence and promotes the expression of emotions and feelings with a view to normalising victim's reactions. Besides, the VSW shall aid the victim in deconstructing some of the fears that may exist.



Some of the most common fears highlighted by victims are the lack of knowledge of the judicial system and the potential presence of the accused in the diligence. Regarding the former, an overview must be given to the victim on how the diligence will happen in that day, with the necessary details. As to the



latter, the VSW shall indeed prepare the victim for the possibility of encountering the defendant in the diligence's venue or even having to face him/her during trial.

## V. 2. THE FIRST PREPARATION SESSION WITH THE VICTIM OR WITNESS

### V. 2.1. Introducing yourself and getting to know the victim or witness

#### **Using icebreakers:**

In order to establish an empathetic and trusting relationship with the victim, icebreakers should be used in the first contact.

With respect to children, VSW can resort to playful techniques or games. In this sense, in order to unblock communication and build a relationship, VSW can resort to drawing, painting, games, cards, etc.

For young people and adults, this relationship will be established through an informal conversation.

The establishment of a relationship of empathy and trust should facilitate the sharing of some personal information, such as:

- Name;
- Age;
- With whom the victim lives;
- Where victim goes to school or where he/she works;
- Likes and dislikes;
- Family and friendship relationships;
- Other relevant information and information that the victim or witness feels important to share.



## V. 3. PREPARING THE VICTIM OR WITNESS TO THE DILIGENCE

### V. 3.1. Explaining in what the diligence consists of

Victims often feel anxious and uncertain before the trial due to the novelty of the situation they find themselves into and one to which victims are not familiarised with, hence the need for professional and specialised accompaniment provided to victims, namely in respect with preparation for trial, but also other procedural diligences.

For this reason, it is important to visit the courtroom in advance to the diligence, explain what the summons are, clarify what victims can expect from that day, what things will be asked from the victim by the judicial actors, and so on.



It shall also be made conscious to victims that they may feel uncomfortable with some questions asked by the defence lawyer. In fact, victims tend to think that lawyers are challenging what they have been through. Therefore, it shall be explained to victims that the defence lawyer is only doing his/her job which is to defend his client's interests, regardless of the truth of the facts.

As to the possibility of meeting the defendant and his/her friends and relatives on the day of the diligence, the VSW must prepare the victim for this possibility by planning in advance what victims can do: try to keep away from them, not react to any provocation and, in case they feel threatened, they shall tell the VSW and/or inform the court officer and/or the police officer



in the courtroom immediately. Whatever is the victim's role in the proceedings, they are always entitled to be accompanied by a lawyer.

Besides, victims shall also become aware that they have the right to be heard and to submit information which may be important for the investigation, as well as to give evidence during the criminal proceedings.

Victims shall also be aware that even though they have told the facts while filling the criminal complaint with the police, sometimes they may be called later by the Criminal Investigation Police or the Public Prosecutor to make further statements or clarify some aspects that were not clear in the complaint.

As to the trial, VSW should explain that victims will be asked questions by the judge, the Public Prosecutor, the defence lawyer and their own lawyer, if they have one. Clarify that it is natural to be asked to provide as much detail as possible because the more information the court has, the better its decision will be. VSW should explain what the judge's expectations are: that victims tell the court what happened in their own words. Therefore, before the trial, the VSW must advise the victim to try to arrange in his/her mind all the information they think it is important to transmit to the court.

VSW must let the victims know that they may also take some notes with them, such as the dates of the most relevant facts. However, the VSW must emphasise that it is normal that victims do not remember some details, especially if some time has gone by since the day of the crime. In these cases, victims shall know that there is no harm in saying "I don't remember".



By the same token, VSW are expected to explain the victim the formalisms expected to be observed in the courtroom, such as:

- The wearing of specific garments by judges and lawyers, the duty to get up when the magistrates enter the room;
- The recording of the diligence and the use of the microphone;
- The layout of the room and where each legal actor shall be seated (if it is not possible to visit the space beforehand, you can go to **infovitimas.pt** or **abcjustica.pt**, where it is possible to find a room model).



It is also crucial to mention to the victim the exceptions that are provided for in law to the duty to testify (when it may apply to the victim in casu). Accordingly, under Article 134 of the Code of Criminal Procedure, the following may refuse to give evidence:

- Descendants, relatives in the ascending line (these are parents, grandparents, great-grandparents and so on), siblings, brothers-in-law, adoptive parents and spouses of the accused;
- Whoever was the spouse of the accused or who, being of another or the same sex, lives with him/her or has lived together in conditions similar to those of the spouses, in relation to facts occurring during marriage or cohabitation.

It must be stressed that victims and witnesses who were married or lived in similar conditions to those of the spouses are not entitled to refusal of testimony in all cases. They may only refuse



to testify about events that happened during the marriage or cohabitation, having to make an oath and answer truthfully about all the events that took place prior and after.

Specifically regarding children, the VSW must ensure to explain:

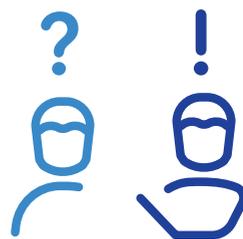
- What a courthouse is - very large building where we go to solve some problems;
- The objectives of the diligence, using the “puzzle” metaphor, wherein the child is the missing piece of the puzzle to find complete the story - the child must tell what he/she knows or remembers concerning the crime experienced;
- Why the child is going to court and if he/she feels something about it;
- The concept of truth. Here, ascertain whether the child knows the difference between truth and what is made up, reality vs. invention and emphasize that in court big decisions are made so that one can only speak the truth;
- In the end a decision will be taken. The outcome does not depend solely on the story told by the child;
- Who will be attending the diligence - people who work at the courthouse and help children who have problems and therefore need to know what happened in order to find a solution;



- That some questions may remind them of moments they just want to forget, however, it is very important that they can tell everything that happened;
- That the people with whom the child will talk want to help and protect him/her.

Equally important is that VSW pay attention to how the question may be posed to the victims. It is important that the victim goes to the diligence well aware of the possibility of not speaking, if they feel tempted to reply to some arguments of prosecutors or judges. At the same time it is important to explain to the victim that the possibility of not testifying should not be seen as a duty not to testify. In essence, the most important thing is to make the victim aware of all his/her rights and empower him/her to decide what he/she considers to be best for him/her.

It is also important that the VSW knows how to manage, especially with minors, a first "no", as this may arise as a result of not having understood well the implications of not testifying. Therefore, the VSW should always make sure that the victim has understood the scope of what has been said about not testifying.



Victims usually feel the courthouse and criminal proceedings as a reality far away from their own, so the VSW must also try to normalise the experience of going to court without devaluing the victim's feelings about it. It should be made clear that all those who work at the court are also people with their own experiences and background, who are able to see right from



wrong and who are capable of empathy and believing a true story.

Finally, it is important that VSW stress that criminal behaviour is neither accepted nor tolerated by society and the trial plays a key role in conveying this message: those who break the law must be held responsible and uphold the consequences. For that reason, going to court can play an important part in the victim's recovery.

### **V. 3.2. Explaining the VSW's role in the diligence**

The role of the VSW when accompanying the victim is not of a lawyer nor of another legal actor nature, so his/her intervention is limited. Nevertheless, the VSW shall emphasise that he/she will be at the victim's side during the whole proceedings.

The VSW is supposed to be a grounding support for the victim during the stressful moments of legal proceedings, generally providing emotional and practical support as to victim's needs and rights.

The trustful relationship with the victim also enables the confidence of victims and witnesses when facing distressful feelings, such as during examination.

A VSW can also cumulate functions in the sense of providing psychological support (if he/she has an academic background in psychology) and assist the legal actors in examining the victim, in addition to the emotional and practical support. In this case, the VSW will be able to more actively intervene in the legal proceedings, e.g.



rephrasing questions - this possibility is particularly important when a child is being interviewed.

The VSW should also clarify that his/her function is only to support the victim and not to make any judgments about the veracity of his/her testimony.

Finally, it shall be made clear by the VSW that the victim's needs are the reason and the limit of the accompaniment, so the victim must be open with the VSW and clarify any doubts. Whether before, during or after the proceedings, the victim can always speak to the VSW.

## V. 4. EVALUATION THE VICTIM OR WITNESS'S NEEDS

The preparation phase should also serve to identify whether or not the victim has specific needs, especially protection needs.

If any particular protection needs are identified, the VSW should make a request (whether written or orally) to the police, public prosecutor or judge to apply the appropriate protection measures. This request must be based on the legislation in force (Code of Criminal Procedure, Victim's Statute, Domestic Violence Law or Witness Protection Law).



Some protective measures may be:

- Withdrawal of the defendant from the courtroom during the victim's testimony;

- Measures to avoid eye contact between the victim and the defendant, using appropriate technological means;
- Measures to prevent the victim and the defendant from meeting each other in the court premises by asking the victim to enter and leave through alternative doors and to wait for the proceedings in a secure room;
- The questioning of the victim by the same person;
- The questioning of victims of sexual violence, gender-based violence or violence in intimate relationships by a person of the same sex as the victim;
- Making statements for future recall;
- Holding of the trial without public hearing.

## V. 5. VISITING THE VENUE

Often the lack of knowledge of the venue in which the diligence will take place causes anxiety on the victim, especially when it is a court of law.

It is advisable to visit the venue before the diligence, but if this is does not seem possible, the following conduct should be adopted (cumulatively or alternatively):

- Go to the **infovitimas website** where a model of a courtroom can be found;
- Visit the venue where the diligence will take place shortly before the scheduled time for the diligence.

## V. 6. PROVIDE PRACTICAL TIPS TO DEAL WITH HAVING TO GO TO THE DILIGENCE

A good preparation of the victim and witnesses for the diligence and for giving evidence requires the transmission of practical tips,



which allow them to be reassured about the legal proceedings, what it consists of and what is about to happen.

In summary, it is important to tell victims and witnesses to:

- Arrive with some time in advance before the diligence to get acquainted with the venue;
- Always speak the truth;
- Listen carefully to the questions asked;
- Take as much time as they need to think before answering;
- Do not reply to questions they didn't fully understand;
- Remember that they are not responsible for the court's decision about the defendant.

See further on **20 hints** - site **infovitimas.pt** .

## V. 7. SPECIFICITIES WHEN ACCOMPANYING THE VICTIM TO PRESS CHARGES

If a victim does not speak Portuguese, the VSW who is accompanying this victim to file criminal charges may first contact the body where the complaint will be filed in order to find out whether it is possible to have an interpreter or someone who speaks in a language that the victim can understand.

In case the latter is not possible, here you can find some alternatives:

- Try to have the victim accompanied by someone who can do the translation (avoiding that children, for example, the victim's children do it);
- Schedule with the authorities a date for the victim to go and file criminal complaint with the presence of an translator;





- If it is a public offence, send the complaint in writing to the Public Prosecution Services;
- If the victim support office has any translators' contacts, the VSW may contact them and ask them to accompany the victim in filling the complaint;
- In situations of extreme need, the VSW can provide translation (e.g. to enable emergency accommodation in a shelter).

## VI. GOING TO THE DILIGENCE

### VI. 1. MEETING THE VICTIM OR WITNESS

If children or young people are being accompanied, the VSW can take with him/her some materials that can be used during the waiting time - for example coloring books - in order to decentralize the child's attention from the diligence and to reduce the anxiety that may be felt by the delay in starting it. Some courthouses already have a room prepared to serve as a waiting room for children, so the VSW must ask the clerks whether such room exists and, if so, to meet the victim there.

Before the diligence, even if there has been previous preparation, the VSW should talk to the victim alone, in order to understand how the victim feels and to be given the opportunity to ask any question or doubt that may still exist about what will happen.



At this moment, the victim may share information he/she hadn't shared before with the VSW, who must be prepared to receive such information. If what the victims tells the VSW has relevance for the diligence or for the whole criminal proceedings, the VSW should give the information to the competent judicial authority - either before or after the diligence takes place, depending on the severity of the facts transmitted and how they can influence the criminal proceedings, as well as the victim's needs.

### **VI. 1.1. If there was not a chance to contact the victim prior to the day of the diligence**

On the day of the proceedings, if it has not been possible to prepare the victim in advance, the VSW should communicate with the legal actor that has requested the accompaniment so that a reserved room may be made available where the VSW can talk to the victim alone.

This conversation will serve to prepare the victim for the diligence, albeit in a necessarily shortened form.

## **VI. 2. KNOWING WHERE TO GO**

In short, the VSW shall be able to:

- **Know and be comfortable in the venue where the diligence will take place:**

In order to be comfortable in the venue, to know his/her way around and where the diligence will take place, it is convenient that the VSW visit the venue before the day of the diligence. This visit can take place in the practical part





of the specialised training (when shadowing another VSW accompanying victims), but also anytime on VSW's own initiative. It is important to know that any citizen can visit the court premises and even attend trials (when they are public). Knowing the venue and being comfortable is important to reassure the victim and to describe it to him/her.

If the VSW does not have the chance to visit the venue prior to the diligence, he/she must arrive sooner at the premises and take a look around, finding out where the bathrooms are and where the secretariat is. The VSW must also be comfortable with asking the court clerks where a certain room can be found and to be directed to it when needed.

- **Confirm that all necessary conditions for the safety of the victim are met:**

The VSW should confirm that the necessary conditions for the safety of the victim are met before the diligence (by contacting the place previously, for example) or on the day of the diligence itself by asking the respective legal actor that will conduct the diligence or other officials. Necessary conditions for the safety of the victim may include not meeting the accused in the waiting room or not making statements in his/her presence, for example.



- **Communicate with magistrates, lawyers, court staff, police officers, defendants, relatives of the victim or defendant and any other persons accompanying the victim:**

Good communication with magistrates, lawyers, court staff and police officers is essential to ensure that the proceedings



go as smoothly as possible and to guarantee the safety of the victim. It is also important to be able to communicate with these legal actors during the proceedings in order to convey any relevant information they do not know.

On the other hand, communication with the accused, his/her family or relatives of the victim or people who is accompanying him/her should all provide for a calm atmosphere in the diligence: the VSW should be able to answer the questions of the victim's family, but also be able not to answer to any provocations or threats of the accused or his/her family or friends (in this case he/she should inform the court staff or law enforcement present in the diligence area).



- **Protect himself/herself against possible threats from court proceedings participants:**

It may happen that, in certain circumstances, the VSW accompanying the victim is threatened by the accused or other persons related to him/her and he/she must be prepared to deal with such threats. This question requires prior preparation of the victim himself/herself, who should know whether the accused is a more or less aggressive, impulsive person, etc. This information will be obtained through contact with the victim and knowledge of his/her history of victimisation. If he/she is being threatened or feeling uncomfortable because of the accused or other people, the victim should ensure his/her safety by not confronting those involved and by immediately informing the security personnel or security forces.





- **Inform the victim that if he/she feels any kind of indisposition or discomfort (physical or emotional) he/she should have no problem mentioning it.**

VSW shall advise victims to arrive a little early as security checks sometimes take time, particularly in the larger courts, and to find out exactly where to go.

In case VSW are accompanying witness, it should be explained to them that they can only enter the courtroom when it is their turn to testify, even though they can stay in the courtroom after testifying.

It shall also be clarified to victims and witnesses that sometimes the trial may start late either because not all the participants have arrived or because the previous diligence is running late. In either case, there is nothing to do but waiting. It is a good idea to take some materials to pass the time with children.

The VSW must know how to handle victim's frustration, which can be heightened by the waiting. Particularly in trials, some victims may feel very frustrated that the defendant has a chance to testify in front of the judge, keeping them waiting. It's the VSW's task to explain the defendant also has procedural rights, but that those don't necessarily collide with the victim's, and ensure the victim will have the chance to tell his/her side of the story.

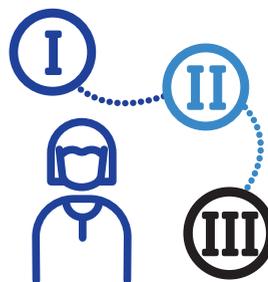


## VI. 3. GOOD PRACTICES WHEN ACCOMPANYING VICTIMS OR WITNESSES TO DILIGENCES

Here VSW can find an overall summary of what the VSW is expected to be able to when accompanying victims or witnesses to diligences:

- Manage situations where the victim is only receptive to talking to the VSW;
- In particular, the VSW should be able to manage situations where the person chairing the respective proceeding asks him/her to communicate through him/her;
- Know where and how to request statements of attendance and reimbursement of expenses.
- At the end of the diligence, the VSW must be prepared to answer any questions the victim may have about the way the diligence was carried out and be able to explain the next stages of the proceedings.
- To reinforce the courage and strength shown by the victim and to ensure that victims know they can share with the VSW how they feel.
- The VSW should work with the victim (and in some cases with the people accompanying the victim) on strategies to deal with any vulnerabilities resulting from participation in the diligence, both in terms of security and emotional impact.

In case of accompaniment of children and young people, it is usual for the parents/legal guardians to question the VSW and the victim himself/herself about how the procedure went, looking for details. As to the children, the VSW should train victims to respond only to what they feel comfortable with. Regarding the VSW, a very general feedback must be made on



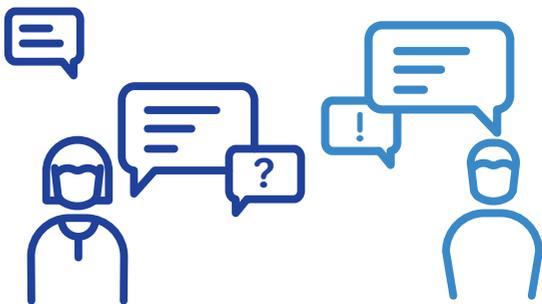


how the diligence went, without going into details. However, sometimes there may be some insistence from the parents/legal guardians to know what answers were given by the child. In this case, the VSW should explain that it is up to the child to decide whether or not to share with the parents what was said. It should also be explained to the parents that if the child does not want to talk about this issue, this should be respected and no pressure should be put on the child, as it will be counterproductive for the recovery process.

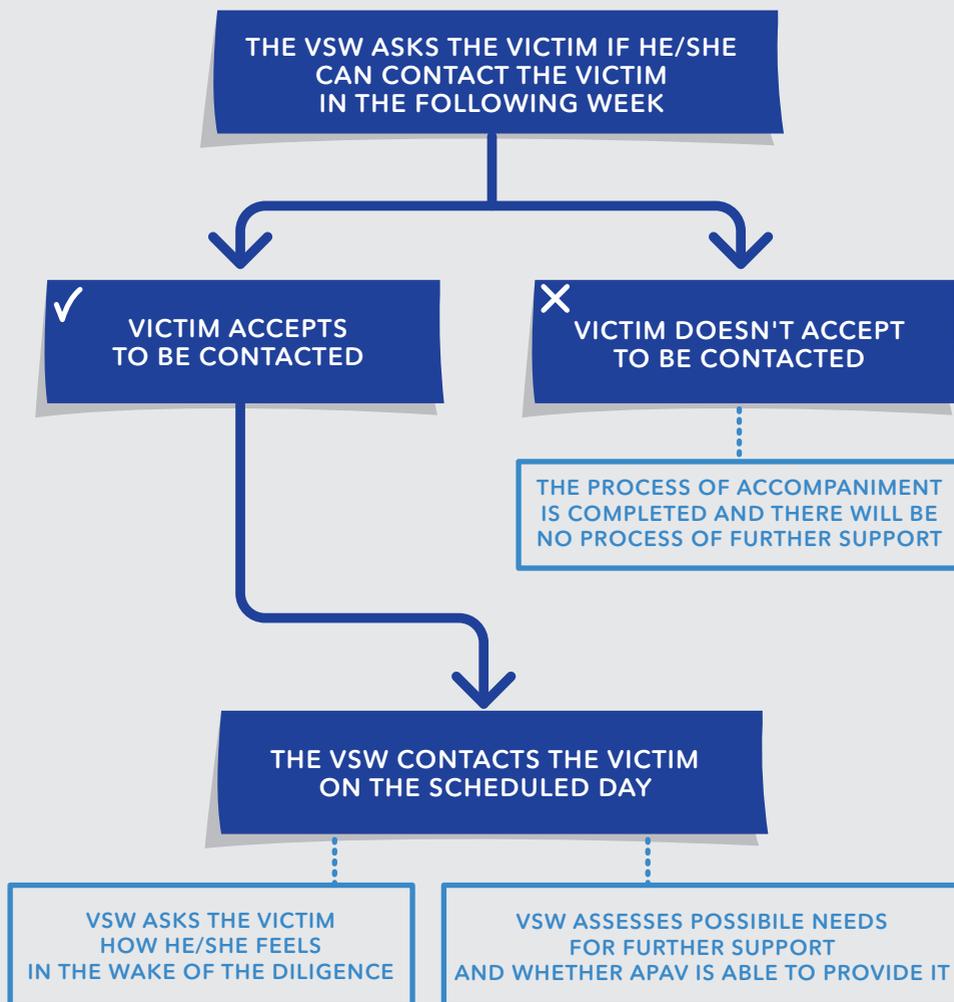
## VII. FOLLOW-UP

### VII. 1. ONGOING SUPPORT AFTER THE DILIGENCE

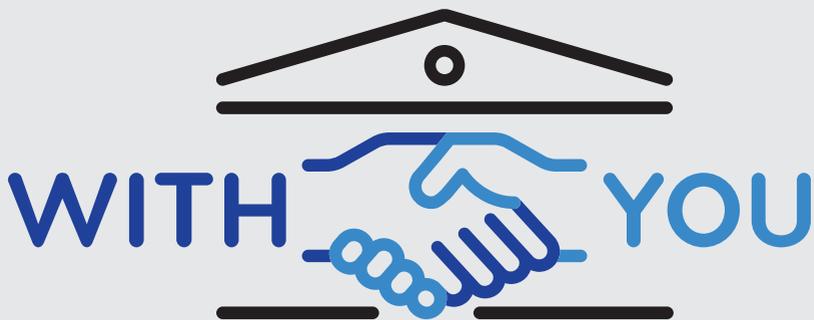
After the diligence is over, if the victim was not already being supported by the victim support organisation prior to the accompaniment practice, the VSW should ask the victim about the possibility of contacting him/her later, in order to find out how he or she feels and to respond to any further support needs the victim may have. Concerning underage victims, the consent for this follow-up contact must be given from their parents/legal guardians. Moreover, it is equally important that the VSW brings parent's awareness to the importance of further follow-up (when considered necessary by the VSW).



# FOLLOW-UP PROCEDURE







ACCOMPANIMENT OF VICTIMS AND  
WITNESSES IN THE JUSTICE SYSTEM

Coordinator:  
Portuguese Association  
for Victim Support



Funded by  
the European Union's  
Justice Programme (2014-2020)

Partners:



This publication was funded by the European Union's Justice Programme (2014-2020).  
The content of this publication represents the views of the author only and is his/her sole responsibility.  
The European Commission does not accept any responsibility for use that may be made of the information it contains.